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  - GLOVES

    Certain knit glove shells and precut palms, products of the United States, were processed in Haiti into completed gloves and classified under item 704.85, Tariff Schedules of the United States, as unornamented knit gloves of man-made fibers and under TSUS item 704.65, as modified, as wool gloves valued over $4 per dozen pairs. Duty allowance under item 807.00, TSUS, as amended, was allowed by Customs as to the precut palms, but was denied as to the knit glove shells. Plaintiff challenged the refusal of Customs to make an allowance for the cost or value of the knit glove shells under item 807.00, as amended.

    On the evidence of record, legislative history and lexicographic definitions, the court held that duty allowance under item 807.00, as amended, was disallowed as to the knit glove shells for failing to qualify as articles "exported in condition ready for assembly without further fabrication" and as articles that "have not been advanced in value or improved in condition abroad except by being

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assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting." Accordingly, judgment was rendered for defendant. *Zwicker Knitting Mills*, C.D. 4786 ---------- 34
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Made plastic records; phonograph records
Certain American made plastic records, which were packaged in Mexico and exported therefrom in association with toy telephones not in issue, were classified as toys, and parts of toys, not specifically provided for, other, under item 737.90, Tariff Schedules of the United States, as modified by T.D. 68-9. Plaintiff claimed primarily that the records were entitled to duty-free entry under TSUS item 800.00 as products of the United States, returned without advancement in value or improved in condition. Alternatively, plaintiff claimed the records were entitled to a duty-free allowance under TSUS item 807.00 as American components of articles assembled abroad. In the event the court determined that neither item 800.00 nor item 807.00 was applicable, plaintiff claimed the records should be classified under the *eo nomine* provision for phonograph records in TSUS item 724.25, as modified by T.D. 68-9.
On the record presented, the court held (1) the involved records were not classifiable as claimed under item 800.00 or 807.00 where claim-supporting documents were not filed with the entries in the office of the district director in accordance with 19 CFR 10.1, and the failure to timely file such documents appeared from the evidence to have been intentional; (2) filing with the court under 19 CFR 10.112 was not permissible because the burden of proof on the importer to negate willful negligence in the failure to effect timely filing of the requisite documentation had not been met, and (3) the records were properly classifiable as alternatively claimed under the *eo nomine* provision for phonograph records in TSUS item 724.25 where the Government conceded them to be such, and the evidence established that those conversational records, which were at times sold separately as replacements or supplements, were more suitable for the mental development of children than for their amusement. Accordingly, judgment was rendered for plaintiff. *Mattel, Inc.*, C.D. 4805---------- 234
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Float glass producers in West Germany (*see* COUNTERVAILING DUTIES, C.D. 4782).

BRUSH CUTTERS
HAND-DIRECTED OR-CONTROLLED TOOLS WITH PNEUMATIC OR SELF-CONTAINED NON-ELECTRIC MOTOR

Certain gasoline-powered, hand-operated brush cutters were classified under item 674.70, Tariff Schedules of the United States, as modified by T.D. 68–9, as hand-directed or-controlled tools with pneumatic or self-contained non-electric motor and parts thereof. Plaintiff claimed the merchandise was properly classifiable under TSUS item 666.00 as hay or grass mowers (except lawn mowers) or as agricultural and horticultural implements, not specially provided for, and parts thereof, free of duty. The government claimed, alternatively, that in the event the court overruled the classification of the imported merchandise, then the merchandise was properly classifiable under TSUS item 666.10, as modified by T.D. 68–9, as lawn mowers.

The court held the merchandise had been properly classified where most of the evidence of chief use relied upon by the importer reflected a condition of the merchandise other than as imported and the remaining evidence fell short of establishing the chief use of a class or kind of merchandise to which the imported brush cutters belong. Accordingly, plaintiff's action was dismissed. *Hawaiian Motor Company*, C.D. 4790 70

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OPTICAL GLASS
Certain color filter glass imported from West Germany, classified as optical glass under item 540.67, Tariff Schedules of the United States, was claimed to be classifiable as colored or special glass, not ground, polished or processed, under TSUS item 542.92.
Based upon the record presented, lexicographic authorities and legislative history, the court held that the glass, which was of high quality, capable of performing an optical function, and used in optical instruments, was not shown to have been incorrectly classified by customs officials as optical glass. Accordingly, the protest was overruled.
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TRADE ACT OF 1974, 88 STAT. 1978 (1975)
(*see* COUNTERVAILING DUTIES, C.D. 4794).
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321(f) (*see* COUNTERVAILING DUTIES, C.D. 4788).
321(f)(1) (*see* COUNTERVAILING DUTIES, C.D.'s 4782, 4794).
331 (*see* COUNTERVAILING DUTIES, C.D. 4794).
331(a) (*see* COUNTERVAILING DUTIES, C.D.'s 4782, 4788, 4794).
U.S. CODE
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702 (*see* MOTION FOR SUMMARY JUDGMENT, C.D. 4792).
703 (*see* MOTION FOR SUMMARY JUDGMENT, C.D. 4792).
706(2)(A) (*see* COUNTERVAILING DUTIES, C.D. 4794).
Title 19, secs.
160 *et seq.* (*see* MOTION FOR SUMMARY JUDGMENT, C.D. 4792).
160(a) (*see* COUNTERVAILING DUTIES, C.D. 4794).
160(c)(1) (*see* MOTION FOR SUMMARY JUDGMENT, C.D. 4792).
257 (*see* COUNTERVAILING DUTIES, C.D. 4794).
258 (*see* COUNTERVAILING DUTIES, C.D. 4794).

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1303(a)(4) (*see* COUNTERVAILING DUTIES, C.D. 4794).
1303(d) (*see* COUNTERVAILING DUTIES, C.D. 4794).
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1303(d)(2) (*see* COUNTERVAILING DUTIES, C.D. 4794).
1303(d)(2)(A) (*see* COUNTERVAILING DUTIES, C.D. 4794).
1303(d)(2)(B) (*see* COUNTERVAILING DUTIES, C.D. 4794).
1303(d)(2)(C) (*see* COUNTERVAILING DUTIES, C.D. 4794).
1303(e) (*see* COUNTERVAILING DUTIES, C.D. 4794).
1315(d) (*see* COUNTERVAILING DUTIES, C.D. 4794).
1507 (*see* MOTION TO DISMISS ACTION, C.D. 4795).
1514
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1514(a) (*see* MOTION FOR SUMMARY JUDGMENT, C.D. 4792).
1514(a)(3) (*see* MOTION FOR SUMMARY JUDGMENT, C.D. 4792).
1514(b)(1) (*see* MULTIPLE PROTESTS, C.D. 4789).
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1516(d) (*see* COUNTERVAILING DUTIES, C.D. 4794).
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1516(g) (*see* COUNTERVAILING DUTIES, C.D. 4794).
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2633 (*see* COUNTERVAILING DUTIES, C.D. 4794).
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2635(a)
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Title 28, secs.
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2635(a) (*see* SEATS FOR RAPID TRANSIT CARS, C.D. 4808).

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CONVERSATIONAL RECORDS (*see* AMERICAN MADE PLASTIC RECORDS, C.D. 4805).

COTTON CANVAS SHOE UPPERS (*see* FOOTWEAR, C.D. 4787).

COUNTERVAILING DUTIES

BOUNTY OR GRANT

This action involves cross-motions for summary judgment filed pursuant to rules 4.12 and 8.2 of the Rules of the United States Customs Court. Plaintiffs, domestic manufacturers and wholesalers of float glass, petitioned the Secretary of the Treasury for imposition of countervailing duties on such merchandise produced in the Federal Republic of Germany pursuant to section 303(a) of the Tariff Act of 1930, as amended by section 331(a) of the Trade Act of 1974. Following the denial of their administrative position, plaintiffs instituted action under section 516(d) of the Tariff Act of 1930, as amended by section 321(f)(1) of the Trade Act of 1974. Plaintiffs alleged that low interest loans, investment subsidies in the form of cash grants and tax credits given to the producers of float glass in West Germany were subject to countervailing duties. Defendant contended these bounties or grants were not countervailable, since they did not tend to distort international trade.

Finding that import statistics supported a finding that float glass produced in the Federal Republic of Germany did not tend to distort international trade and did not discriminate against the United States production and sales, both domestic and foreign, the court held that plaintiffs had failed to overcome the presumption of correctness attaching to the action of the Secretary. Accordingly, plaintiffs' motion for summary judgment was denied and defendant's cross-motion for summary judgment was granted. *ASG Industries, Inc., PPG Industries, Inc., Libbey-Owens-Ford Company, and C E Glass*, C.D. 4782_____ 1

Appealed to U.S. Court of Customs and Patent Appeals, Appeal 79–15

This action involves cross-motions for summary judgment filed pursuant to rules 4.12 and 8.2 of the Rules of the United States Customs Court. Plaintiffs, domestic manufacturers and wholesalers of float glass, informed the Commissioner of Customs by petition, that certain bounties or grants were being paid upon the manufacture or production of float glass in the United Kingdom or upon exportation. After conducting an investigation, the Department of the Treasury concluded that no bounty or grant was being paid and a final negative countervailing duty determination was issued. Plaintiffs, pursuant to section 516(d) of the Tariff Act of 1930, as amended by section 321(f) of the Trade Act of 1974, served notice of intention to contest the negative determination and filed summons in the United States Customs Court.

The court found that various types of government financial assistance had been extended by Great Britain to underdeveloped regions of that country for general political, policymaking and economic reasons not conditioned upon exportation. On the basis of legislative intent, the presumption of correctness, the reasonableness of the decision of the Secretary of the Treasury that no bounty or grant had been paid or bestowed, and the thrust of *United States* v. *Zenith Radio Corporation*, 64 CCPA 13, C.A.D. 1195 (1977), *aff'd*, 437 U.S. 443 (1978), the court held that the programs of Great Britain did not come within the purview of section 303(a) of the Tariff Act of 1930, as amended by section 331(a) of the Trade Act of 1974. Accordingly, plaintiffs' motion for summary judgment was denied and defendant's cross-motion for summary judgment granted. *ASG Industries, Inc., PPG Industries, Inc., Libbey-Owens-Ford Company*, and *C E Glass*, C.D. 4788_____ 61

Appealed to U.S. Court of Customs and Patent Appeals, Appeal 79–16

Pursuant to 19 U.S.C., sec. 1516(d), plaintiffs, American manufacturers and wholesalers of the same class or kind, as the merchandise the subject of the Secretary of the Treasury's negative countervailing duty determination regarding float glass from Italy produced by Societa Italiano Vetro, S.p.A. (SIV), filed a timely notice of their desire

COUNTERVAILING DUTIES—Continued Page
BOUNTY OR GRANT—Continued
to contest that determination. The Secretary caused publication of plaintiffs' notice to be made in the Federal Register. Plaintiffs thereupon instituted the action before the court. The question for determination was whether the bestowal by the Italian Government, under various so-called regional development programs, of certain pecuniary benefits upon the manufacture or production of float glass in Italy by SIV constituted payment or bestowal of bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. § 1303). The benefits consisted of investment grants, preferential financing and reduction in the required contribution to the state welfare organization. Plaintiffs filed a motion for summary judgment and defendant a cross-motion for summary judgment.
On the record presented, applicable statutes, legislative history and pertinent court decisions, the court held that the payment or bestowal of the grants in question upon the manufacture or production of float glass in Italy by SIV were bounties or grants within the ambit of the countervailing duty law. Accordingly, plaintiffs' motion for summary judgment was granted and defendant's cross-motion for summary judgment was denied. The court ordered that the Secretary of the Treasury (1) ascertain and determine or estimate the net amount of the bounties or grants paid or bestowed upon the manufacture or production of float glass in Italy by SIV; and (2) direct the appropriate customs officers throughout the United States to assess countervailing duties thereon, in said net amount equal to the said bounties or grants, entered or withdrawn from warehouse for consumption on or after the day following the date of entry of the court's order. *ASG Industries, Inc., PPG Industries, Inc., Libbey-Owens-Ford Company,* and *C E Glass*, C.D. 4794 101
Appealed to U.S. Court of Customs and Patent Appeals, Appeal 79–24

COUNTERVAILING DUTY LAWS
LEGISLATIVE HISTORY (*see* COUNTERVAILING DUTIES, C.D. 4794).

"COURTESY NOTICE" OF LIQUIDATION, RELIANCE ON (*see* MOTION FOR REHEARING, C.D. 4793).

CROSS-MOTION
FOR DISMISSAL (*see* MOTION FOR SUMMARY JUDGMENT, C.D. 4792).
FOR SUMMARY JUDGMENT
(*see* COUNTERVAILING DUTIES, C.D.'s 4788, 4794).
Motion for summary judgment
(*see* DISPOSABLE PLASTIC APRONS AND BIBS, C.D. 4796).
(*see* SEATS FOR RAPID TRANSIT CARS, C.D. 4808).
TO DISMISS ACTION; LACK OF JURISDICTION (*see* MULTIPLE PROTESTS, C.D. 4789).
TO HAVE CUSTOMS FORM 4315 FILED *nunc pro tunc* (*see* MOTION TO DISMISS ACTION, C.D. 4795).
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CROWN
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CRUDE OR PROCESSED PRODUCTS OF VEGETABLE ORIGIN USED CHIEFLY FOR COLORING (*see* MARIGOLD MEAL, C.D. 4809).

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JURISDICTIONAL LIMITS (*see* MOTION FOR SUMMARY JUDGMENT, C.D. 4792).

CUSTOMS FORM 4315, failure to file (*see* MOTION TO DISMISS ACTION, C.D. 4795).

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BOUNTY (*see* COUNTERVAILING DUTIES, C.D. 4794).
CLOCK MOVEMENT
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DIAL (*see* VISIBLE LIGHT EMITTING DIODES, C.D. 4811).
ENZYME PREPARATION (*see* MICROBIAL MILK-CLOTTING ENZYMES, C.D. 4806).
FALSEWORK (*see* SHORE FRAME SYSTEMS, C.D. 4802).
FUNCTIONAL (*see* FOOTWEAR, C.D. 4787).
GRANT (*see* COUNTERVAILING DUTIES, C.D. 4794).
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ORNAMENTED (*See* FOOTWEAR, C.D. 4787).
PARTIAL LINING (*see* MICROSCOPE CASES, C.D. 4804).
RENNET (*see* MICROBIAL MILK-CLOTTING ENZYMES, C.D. 4806).
RENNIN (*see* MICROBIAL MILK-CLOTTING ENZYMES, C.D. 4806).
SCAFFOLD (*see* SHORE FRAME SYSTEMS, C.D. 4802).
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SHRINES (*see* PINNACLES, C.D. 4799).
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(*see* VISIBLE LIGHT EMITTING DIODES, C.D. 4811).
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DIAGNOSTIC TEST KIT
OTHER ARTICLES NOT PROVIDED FOR ELSEWHERE IN TARIFF SCHEDULES

Radioimmunoassay testing kits, used to measure certain chemicals in blood serum, were classified under item 799.00, Tariff Schedules of the United States, as other articles not provided for in the tariff schedules, and were claimed to be classifiable under TSUS item 494.50, as a usefully radioactive chemical compound. Some entries were classified under other TSUS items, which defendant conceded was in error. Parties were in agreement that the kits were entireties and plaintiff agreed that if the articles were not classifiable as claimed, the classification under TSUS item 799.00 was correct.

On the record presented, the court held the kits were not classifiable as a usefully radioactive chemical compound under item 494.50, inasmuch as that provision did not describe importations which consisted of a number of separate compounds in addition to one that was

DIAGNOSTIC TEST KIT—Continued Page
OTHER ARTICLES NOT PROVIDED FOR ELSEWHERE IN TARIFF SCHEDULES—Continued
radioactive. It was noted that in functional terms, the antibody component, which determines the specificity of the test, and the "standard" component, which provides a standard result against which to measure the result from the serum under study, are no less important than the radioactive component which supplies the means of measurement. Accordingly, judgment was entered for defendant and in those instances in which entries had been classified under a provision other than item 799.00, judgment was entered without affirmance of classification. *Pharmacia Laboratories, Inc.*, C.D. 4798---------- 166
Appealed to U.S. Court of Customs and Patent Appeals, Appeal 79–23

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COMMON MEANING (*see* VISIBLE LIGHT EMITTING DIODES, C.D. 4811).
(*see* VISIBLE LIGHT EMITTING DIODES, C.D. 4811).

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DISPOSABLE PLASTIC APRONS AND BIBS
PLASTIC WEARING APPAREL
This matter was before the court on cross-motions for summary judgment. Certain plastic disposable aprons and bibs imported from Korea were classified as plastic wearing apparel under item 722.30, Tariff Schedules of the United States, and were claimed to be classifiable as other plastic articles not specially provided for under the duty free TSUS item 774.60.
On the record presented, the court held the merchandise had been properly classified as wearing apparel composed of plastic and noted that the protective purposes of the importations were consistent with the purposes of wearing apparel, and their disposable nature was irrelevant to their tariff classification. Accordingly, the court denied plaintiff's motion for summary judgment and granted defendant's cross-motion for summary judgment. *Admiral Craft Equipment Corp.*, C.D. 4796---------- 162

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AMERICAN GOODS RETURNED (*see* AMERICAN MADE PLASTIC RECORDS, C.D. 4805).

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DUTY-FREE ENTRY, INSTITUTIONS ENTITLED TO (*see* PINNACLES, C.D. 4799).

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ELECTRICAL
ARTICLES, AND ELECTRICAL PARTS OF ARTICLES, NOT SPECIALLY PROVIDED FOR (*see* "T.V. GAMES", C.D. 4784).
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PRESUMPTION OF CORRECTNESS (*see* COLOR FILTER GLASS, C.D. 4783).
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FOOTWEAR
ARTICLES OF TEXTILE MATERIALS, NOT SPECIALLY PROVIDED FOR, NOT ORNAMENTED
Certain cotton canvas shoe uppers were classified under item 380.00, Tariff Schedules of the United States, as "* * * other men's or boys' wearing apparel, ornamented: Of cotton." At the trial defendant abandoned its classification under item 380.00 and asserted that the merchandise was properly classifiable under TSUS item 386.04 as "Articles not specially provided for, of textile materials: * * * other articles ornamented: Of cotton." Plaintiff claimed the merchandise was properly classifiable under TSUS item 386.50 as "Articles not specially provided for, of textile materials: * * * Other articles, not ornamented: Of cotton: * * * Other."
Based on the record presented and dictionary definitions, the court held the imported shoe uppers were properly classifiable under TSUS 386.50, as claimed by plaintiff, since the arch stitching thereon was not ornamental. *Endicott Johnson Corporation*, C.D. 4787 ---------- 49
Appealed to U.S. Court of Customs and Patent Appeals, Appeal 79–19.
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IC CHIP (MONOLITHIC INTEGRATED CIRCUIT CHIP) (*see* MONOLITHIC INTEGRATED CIRCUITS, C.D. 4810).
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(*see* TRIGGER SPRAYERS, C.D. 4800).
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1921, vol. 61, p. 4132 (*see* COUNTERVAILING DUTIES, C.D. 4794).
1930, vol. 72, part 9, pp. 10029–32 (*see* MONOLITHIC INTEGRATED CIRCUITS, C.D. 4810).
1972, vol. 118
Pp. 23484, 23883, 29695, 32413–16 (*see* COUNTERVAILING DUTIES, C.D. 4794).
1978, vol. 124, S 18551 (daily ed. October 12, 1978) (*see* COUNTERVAILING DUTIES, C.D. 4794).
1979, vol. 125, H 1018–H 1025 (daily ed. March 1, 1979) (*see* COUNTERVAILING DUTIES, C.D. 4794).
COUNTERVAILING DUTY LAWS (*see* COUNTERVAILING DUTIES, C.D. 4794).
EXPLANATORY NOTES TO THE BRUSSELS NOMENCLATURE, 1955 (*see* SHORE FRAME SYSTEMS, C.D. 4802).
HEARING BEFORE THE SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY OF THE SENATE COMMITTEE OF THE JUDICIARY ON S. 2857, 95th CONG., 2d SESS. (1978) (*see* COUNTERVAILING DUTIES, C.D. 4794).
HEARINGS BEFORE THE HOUSE WAYS AND MEANS COMMITTEE ON H.R. 6738, 75th Cong., 1st Sess. (1937), p. 99 (*see* COUNTERVAILING DUTIES, C.D. 4794).
H. R.
4449, 87th Cong., 2d Sess. (1962) (*see* PINNACLES, C.D. 4799).
15794, 92d Cong., 2d Sess., 118 Cong. Rec. 23484 (1972) (*see* COUNTERVAILING DUTIES, C.D. 4794).
6767, 93d Cong., 1st Sess., § 330 (1973) (*see* COUNTERVAILING DUTIES, C.D. 4794).
10710, 93d Cong., 1st Sess., § 331 (1973) (*see* COUNTERVAILING DUTIES, C.D. 4794).

LEGISLATIVE HISTORY—Continued

HOUSE REPORT

No. 1429, 75th Cong., 1st Sess. (1937), p. 4 (*see* COUNTERVAILING DUTIES, C.D. 4794).

No. 2677, 75th Cong., 3d Sess. (1938), p. 7 (*see* COUNTERVAILING DUTIES, C.D. 4794).

No. 1980, 79th Cong., 2d Sess. (1946), pp. 45–46 (*see* COUNTERVAILING DUTIES, C.D. 4794).

No. 342, 89th Cong., 1st Sess. (1965), pp. 48–49 (*see* AMERICAN GOODS RETURNED, C.D. 4786).

No. 979, 89th Cong., 1st Sess. (1965), p. 12 (*see* MARIGOLD MEAL, C.D. 4809).

No. 92–1583, 92d Cong., 2d Sess. (1972) (*see* COUNTERVAILING DUTIES, C.D. 4794).

No. 93–571, 93d Cong., 1st Sess. (1973), pp. 75–77 (*see* COUNTERVAILING DUTIES, C.D. 4794).

No. 93–1644, 93d Cong., 2d Sess. (1974), p. 45 (*see* COUNTERVAILING DUTIES, C.D. 4794).

No. 94–1656, 94th Cong., 2d Sess. (1976), p. 1 (*see* MOTION FOR SUMMARY JUDGMENT, C.D. 4792).

S. 3964, 92d Cong., 2d Sess., 118 Cong. Rec. 29695 (1972) (*see* COUNTERVAILING DUTIES, C.D. 4794).

SENATE FINANCIAL COMMITTEE REPORT ON THE TRADE REFORM ACT OF 1974 (H.R. 10710), S. REP. No. 93–1298, 93d CONG., 2d SESS. (1974). P. 183 (*see* COUNTERVAILING DUTIES, C.D. 4794).

SENATE REPORT

No. 1465, 75th Cong., 3d Sess. (1938), pp. 9–10 (*see* COUNTERVAILING DUTIES, C.D. 4794).

No. 1719 [To accompany H.R. 4449, 87th Cong., 2d Sess. (1962)] (*see* PINNACLES, C.D. 4799).

No. 530, 89th Cong., 1st Sess. (1965), pp. 11–12 (*see* MARIGOLD MEAL, C.D. 4809).

No. 92–1221, 92d Cong., 1st Sess. (1972), p. 8 (*see* COUNTERVAILING DUTIES, C.D. 4794).

No. 92–1298, 92d Cong., 2d Sess. (1972) (*see* COUNTERVAILING DUTIES, C.D. 4794).

No. 93–1298, 93d Cong., 2d Sess. (1974)

P. 183 (*see* COUNTERVAILING DUTIES, C.D. 4782).

Pp. 183–188, 260–261 (*see* COUNTERVAILING DUTIES, C.D. 4794).

No. 94–996, 94th Cong., 2d Sess. (1976), p. 11 (*see* MOTION FOR SUMMARY JUDGMENT, C.D. 4792).

STAFF OF SENATE COMMITTEE ON FINANCE, SUMMARY AND ANALYSIS OF H.R. 10710—THE TRADE REFORM ACT OF 1973, 93d CONG., 2d SESS. (1974), PP. 50–51 (*see* COUNTERVAILING DUTIES, C.D. 4794).

SUMMARIES OF TARIFF INFORMATION, 1948, VOL. 2, PART 2, P. 102 (*see* COLOR FILTER GLASS, C.D. 4783).

SUMMARIES OF TRADE AND TARIFF INFORMATION

1968 (TSUS) schedule 5, vol. 4, p. 33 (*see* COLOR FILTER GLASS, C.D. 4783).

1970 (TSUS) schedule 7, vol. 2, p. 197 (*see* COLOR FILTER GLASS, C.D. 4783).

1971 (TSUS) schedule 4, vol 7, p. 64 (*see* MICROBIAL MILK-CLOTTING ENZYMES, C.D. 4806).

1971 (TSUS) schedule 5, vol. 5 (*see* COUNTERVAILING DUTIES, C.D. 4782).

TARIFF CLASSIFICATION STUDY

Explanatory Materials, 1964, vol. 2, pp. 555–56 (*see* COLOR FILTER GLASS, C.D. 4783).

1960

Schedule 7, pp. 242, 243 (*see* SEATS FOR RAPID TRANSIT CARS, C.D. 4808).

Seventh Supplemental Report, 1963, p. 99 (*see* SEATS FOR RAPID TRANSIT CARS, C.D. 4808).

Submitting Report, part II(E)(4), pp. 15-16 (*see* SHORE FRAME SYSTEMS, C.D. 4802).

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LEGISLATIVE HISTORY—Continued
THIRD ANNUAL JUDICIAL CONFERENCE OF THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS, MAY 10, 1976, REPORT OF PROCEEDINGS, 72 F.R.D. 239, 372–378, 381–396 (*see* MOTION FOR SUMMARY JUDGMENT, C.D. 4792).
LEGISLATIVE INTENT
GENERAL HEADNOTES AND RULES OF INTERPRETATION, RULE 10 (ij) (*see* SEATS FOR RAPID TRANSIT CARS, C.D. 4808).
LENS NOT USED FOR "SUBSIDIARY PURPOSE" (*see* MACHINES FOR OPTICAL INSPECTION OF AMPULS, C.D. 4807).
LEXICOGRAPHIC SOURCES
THE AMERICAN COLLEGE DICTIONARY (1962), P. 1200 (*see* SHORE FRAME SYSTEMS, C.D. 4802).
AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (1970), P. 1278 (*see* SHORE FRAME SYSTEMS, C.D. 4802).
BLACK'S LAW DICTIONARY
(4th ed. 1951), p. 1952 (*see* SHORE FRAME SYSTEMS, C.D. 4802).
(Revised 4th ed. 1968), p. 133 (*see* PINNACLES, C.D. 4799).
ENCYCLOPAEDIA BRITANNICA
(*see* COLOR FILTER GLASS, C.D. 4783).
(1970), vol. 19, p. 1132 (*see* SHORE FRAME SYSTEMS, C.D. 4802).
FUNK & WAGNALLS NEW COMPREHENSIVE INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE (1978)
P. 832 (*see* MONOLITHIC INTEGRATED CIRCUITS, C.D. 4810).
P. 353 (*see* VISIBLE LIGHT EMITTING DIODES, C.D. 4811).
FUNK & WAGNALLS NEW STANDARD DICTIONARY OF THE ENGLISH LANGUAGE (1952), P. 699 (*see* VISIBLE LIGHT EMITTING DIODES, C.D. 4811).
INTERNATIONAL DICTIONARY OF PHYSICS AND ELECTRONICS (*see* COLOR FILTER GLASS, C.D. 4783).
THE JEWELER'S DICTIONARY (3D ED. 1976) (*see* VISIBLE LIGHT EMITTING DIODES, C.D. 4811).
XIII NEW CATHOLIC ENCYCLOPAEDIA (1967), PP. 181–182 (*see* PINNACLES, C.D. 4799).
THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (UNABRIDGED ED. 1969) (*see* SHORE FRAME SYSTEMS, C.D. 4802).
VAN NOSTRAND'S SCIENTIFIC ENCYCLOPEDIA (3D ED. 1958), P. 1604 (*see* SHORE FRAME SYSTEMS, C.D. 4802).
WEBSTER'S NEW COLLEGIATE DICTIONARY (1973) (*see* MONOLITHIC INTEGRATED CIRCUITS, C.D. 4810).
WEBSTER'S NEW INTERNATIONAL DICTIONARY (2D ED. 1956) (*see* FOOTWEAR, C.D. 4787).
WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE (2D ED. 1960) (*see* MICROBIAL MILK-CLOTTING ENZYMES, C.D. 4806).
WEBSTER'S THIRD INTERNATIONAL DICTIONARY (1963) (*see* MARIGOLD MEAL, C.D. 4809).
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY
(1966)
(*see* AMERICAN GOODS RETURNED, C.D. 4786).
(*see* MONOLITHIC INTEGRATED CIRCUITS, C.D. 4810).
(*see* VISIBLE LIGHT EMITTING DIODES, C.D. 4811).
(1968) (*see* PINNACLES, C.D. 4799).
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED (1971), P. 2267 (*see* SHORE FRAME SYSTEMS, C.D. 4802).
LIMITATIONS
SHRINES (*see* PINNACLES, C.D. 4799).
LIQUIDATION NOTICE (*see* MOTION FOR REHEARING, C.D. 4793).
LOW-INTEREST RATE FINANCING (*see* COUNTERVAILING DUTIES, C.D. 4794).
MACHINE
COMMON MEANING (*see* "T.V. GAMES", C.D. 4784).
CUTTING (*see* BRUSH CUTTERS, C.D. 4790).

MACHINES Page
FOR OPTICAL INSPECTION OF AMPULS
Lens not used for "subsidiary purpose" (*see* MACHINES FOR OPTICAL INSPECTION OF AMPULS, C.D. 4807).
Optical measuring or checking instruments * * *
This action is before the United States Customs Court on remand from the Court of Customs and Patent Appeals in *United States* v. *Corning Glass Works*, 66 CCPA ——, C.A.D. 1216, 586 F.2d 822 (1978), which reversed the judgment for plaintiff in *Corning Glass Works* v. *United States*, 79 Cust. Ct. 72, C.D. 4716, 448 F. Supp. 262 (1977), *reh. denied*, 80 Cust. Ct. 22, C.D. 4733 (1978).
Certain "Rota" machines for the optical inspection of ampuls (Rotas) imported from West Germany were classified under the provision in item 710.90, Tariff Schedules of the United States, as modified by T.D. 68–9, for "[o]ptical measuring or checking instruments * * *", and claimed to be properly dutiable under TSUS item 678.50, as modified by T.D. 68–9, for "[m]achines not specially provided for * * *".
On the record presented, the court found the purpose of utilizing the Rota was for the visual inspection of ampuls; and, that the conveying, spinning and rejection features of the Rota were intimately related to the viewing of the ampuls for inspection purposes, which must be performed with the aid of the magnifying lens. The court held that plaintiff had failed to overcome the presumption that the magnifying lens of the Rota did not serve a "subsidiary purpose", and that the Rotas were "optical instruments" as defined in headnote 3, part 2, schedule 7, TSUS. Inasmuch as the Appellate Court had determined that the Rota performed a "checking" function within the purview of the superior heading to TSUS item 710.90, the Customs Court concluded that the merchandise had been properly classified by Customs under TSUS, item 710.90. Accordingly, this action was dismissed. *Corning Glass Works*, C.D. 4807 ——— 249
NOT SPECIALLY PROVIDED FOR (*see* MACHINES FOR OPTICAL INSPECTION OF AMPULS, C.D. 4807).
MADONNA
QUEEN OF THE UNIVERSE STATUE; SHRINE WITHIN MEANING OF TARIFF LAWS (*see* PINNACLES, C.D. 4799).
SHRINE (*see* PINNACLES, C.D. 4799).
MARIGOLD MEAL
CHIEF USE (*see* MARIGOLD MEAL, C.D. 4809).
PRODUCTS OF VEGETABLE ORIGIN CHIEFLY USED FOR COLORING, CRUDE OR PROCESSED
Certain marigold meal was classified as other animal feeds and ingredients therefor, not specially provided for, under item 184.75, Tariff Schedules of the United States. Plaintiff claimed classification under the duty-free TSUS item 470.80, as crude or processed products of vegetable origin used chiefly for coloring or alternatively, as other products of vegetable origin used chiefly for coloring.
On the record presented, lexicographic history and lexicographic sources, the court found that plaintiff had established that the marigold meal fell within the provision for products of vegetable origin used chiefly for coloring and, the addition of an antioxidant, ethoxyquin, did not constitute additional processing within the meaning of headnote 2(a), schedule 4, part 9, subpart A, which would remove the marigold meal from the term "crude or processed". Accordingly, the merchandise was held properly subject to classification under TSUS item 470.80, as claimed. *Joseph F. Hendrix a/c Productos Deshidratados de Mexico, S.A.*, C.D. 4809 ——— 264
MEANING IN EFFECT AT DATE OF ENACTMENT OF TSUS
COMMERCIAL DESIGNATION (*see* SHORE FRAME SYSTEMS, C.D. 4802).
METHANOL
ANTIDUMPING ACT OF 1921 (*see* MOTION FOR SUMMARY JUDGMENT, C.D. 4792).

MICROBIAL MILK-CLOTTING ENZYMES — Page
RENNET

A certain microbial enzyme preparation, described on the import invoice as "Rennilase", used in the curdling of milk for cheese, was classified under item 437.49, Tariff Schedules of the United States, as "Enzymes and ferments: * * * Other, and claimed to be classifiable under the duty-free TSUS item 437.46, which provides for "Enzymes and ferments: Rennet".

On the record presented and dictionary definitions, the court found that plaintiff had satisfactorily established that Rennilase was a form of rennet, microbial rennet, which had recently been developed. Since an *eo nomine* provision encompasses all forms of the named item including those subsequently developed, the court held plaintiff had met its burden of proof. Accordingly, plaintiff's claim for classification under TSUS item 437.46, as rennet, was sustained. *Novo Enzyme Corporation*, C.D. 4806 ---------- 240

MICROSCOPE CASES

DEEMED LINED FOR CLASSIFICATION PURPOSES; PARTIALLY LINED MICROSCOPE CASES (*see* MICROSCOPE CASES, C.D. 4804).

LINED WITH TEXTILE FABRIC (*see* MICROSCOPE CASES, C.D. 4804).

MICROSCOPE CASES LINED WITH TEXTILE FABRIC

Certain microscope cases with frames, mountings and other microscope parts were classified under item 708.80, Tariff Schedules of the United States, as frames and mountings for compound optical microscopes. Plaintiff claimed the merchandise was properly classifiable under TSUS item 204.50 as microscope cases lined with textile fabric.

The court held that the imported microscope cases were properly classifiable separately under TSUS item 204.50, as claimed, since the facts established that the cases are ordinarily sold at retail with complete microscopes and not with the parts with which the cases were imported and the partial lining in the cases is functional. *Swift Instruments, Inc.*, C.D. 4804 ---------- 231

MONOLITHIC INTEGRATED CIRCUITS

MORE THAN DOCTRINE NOT APPLICABLE (*see* MONOLITHIC INTEGRATED CIRCUITS, C.D. 4810).

TRANSISTORS AND OTHER RELATED ELECTRONIC CRYSTAL COMPONENTS

Certain merchandise imported for incorporation and use in solid-state electronic digital watches was classified under item 720.75, Tariff Schedules of the United States, as assemblies or subassemblies for watch movements consisting of two or more parts joined together. Plaintiff claimed the imported merchandise was properly classifiable under TSUS item 687.60 as transistors and other related electronic crystal components. Defendant asserted an alternative defense that the merchandise, if found to be not properly classifiable under item 720.75, was properly classifiable under TSUS item 720.86, the provision for other movements under "Assemblies and subassemblies for clock movements" (Schedule 7, Part 2).

On the record presented, legislative history and lexicographic sources, the court found that the solid-state digital watch module of which the imported merchandise was a component did not incorporate the transfer of any physical or mechanical motion therein and, accordingly, was not a "timepiece movement" within the intendment of TSUS. The court held the merchandise in question by virtue of its intrinsic characteristics, nature and function was more specifically described under TSUS item 687.60 as an integrated circuit. Plaintiff's claim was sustained. *Texas Instruments Inc.*, C.D. 4810 ---------- 272

Appealed to U.S. Court of Customs and Patent Appeals, Appeal 79-33.

MORE THAN DOCTRINE NOT APPLICABLE (*see* MONOLITHIC INTEGRATED CIRCUITS, C.D. 4810).

MOTION

FOR JUDGMENT ON PLEADINGS (*see* MULTIPLE PROTESTS, C.D. 4789).

MOTION—Continued

FOR REHEARING

Pursuant to the provisions of rule 12.1 of the Rules of the United States Customs Court, plaintiff moved for a rehearing and a reconsideration of the judgment rendered in this action. Plaintiff sought to vacate a voluntary abandonment of two customs entries submitted to the court on an agreed statement of facts, and which resulted in the decision and judgment under consideration. The decision and judgment provided for the reliquidation of only one of three entries of merchandise which were the subject of that action. The two entries in issue were voluntarily abandoned by the plaintiff because of the belief that their liquidation was void.

In the instance of the two entries in issue, the Customs Service, in issuing its Notice of Entries Liquidated (called informally a "courtesy notice") listed the name of the importer as Winter-Wolff International Corp., rather than State Metals, Inc., the plaintiff herein. State Metals, Inc., was formerly known as State Metals Division, Winter-Wolff International Corp. The "courtesy notice" was sent to plaintiff. In response to that notice, plaintiff filed a protest contesting the classification of the merchandise with the name of the importer of record as Winter-Wolff International Corp. Unknown to the importer's attorney, the Bulletin Notice of Entries Liquidated, posted at the port of entry had the correct importer's name, State Metals. As a consequence of the mailing and reliance upon the "courtesy notice," plaintiff failed to file a protest within the required 90 days. After completion of the administrative proceedings before the Customs Service, a civil action was instituted in the name of plaintiff contesting the classification of the merchandise on all three entries. The action resulted in an agreement between the parties that the merchandise had been improperly classified. A proposed stipulation was drafted reflecting the proper classification. Before executing the agreed statement of facts, defendant objected to the inclusion of the two entries, asserting that the court lacked jurisdiction. Plaintiff, then abandoned the two entries and submitted an agreed statement of facts as to only one entry. A decision and judgment was then entered. Subsequently plaintiff ascertained that the name listed on the Bulletin Notice of Entries Liquidated was State Metals, Inc. Plaintiff's attorney filed the instant motion and oral argument was heard. Defendant opposed plaintiff's requested relief, asserting that the liquidations of the entries were proper.

Based upon a stipulation of the parties, the court found that one of the three entries had been reliquidated; that except for the misadventure caused by the "courtesy notice" upon which the importer relied, all of the entries would have been reliquidated; and, that alone had prevented the importer from receiving a return of the monies to which it was lawfully entitled. On the particular facts presented, the court held there had been no valid liquidation of the two entries in dispute within the purview of section 514 of the Tariff Act of 1930, as amended and insofar as they related to those two entries, the protests were premature. Accordingly, the decision and judgment with respect to those two entries was rescinded and the entries ordered returned to the port of entry, to enable the customs officials to complete the required liquidation. *State Metals, Inc.*, C.D. 4793---------- Page 91

FOR SUMMARY JUDGMENT

(*see* COUNTERVAILING DUTIES, C.D.'s 4782, 4788, 4794).

Cross-motion

For dismissal

Pursuant to rule 8.2 of the Rules of the United States Customs Court, plaintiff moved for summary judgment and defendants cross-moved for dismissal under rule 4.7(b) on the ground that the court lacked jurisdiction of the subject matter of a certain action.

Plaintiff, who *inter alia* was an importer of methyl alcohol from Canada, sought a declaratory judgment pursuant to 28 U.S.C., sec. 2201, declaring that the Secretary of the Treasury lacked

MOTION—Continued Page
FOR SUMMARY JUDGMENT—Continued
Cross-motion—Continued
For dismissal—Continued
authority to initiate an investigation under the Antidumping Act of 1921, as amended (19 U.S.C., secs. 160 *et seq.*), and requiring that defendants refrain from the prosecution of such investigation. Additionally, plaintiff requested whatever ancillary relief may be necessary and proper pursuant to 28 U.S.C., sec. 2202. In support of their cross-motion to dismiss, defendants contended that the statutory prerequisites for invoking the court's jurisdiction under 28 U.S.C., sec. 1582 had not been complied with.

Inasmuch as there had been no liquidation nor assessment of dumping duties but merely the Secretary of the Treasury's determination to initiate the antidumping proceeding, the court held the filing of the so-called "protest" and commencement of the court action were premature and anticipatory; and since plaintiff was suing as an importer, the Secretary's determination was not ripe for judicial review under 28 U.S.C., sec. 1582(c) until plaintiff's entries of merchandise had been liquidated with assessment of antidumping duties, protests had been filed and denied, and all liquidated duties, charges and exactions had been paid. Accordingly, an order was entered denying plaintiff's motion and granting defendants' cross-motion to dismiss for lack of jurisdiction of the subject matter, but without prejudice to renewal by plaintiff if and when the jurisdictional prerequisites can be satisfied. *Alberta Gas Chemicals, Inc.* v. *W. Michael Blumenthal, Secretary of the Treasury, Robert H. Mundheim, General Counsel of the Department of the Treasury, Robert E. Chasen, Commissioner of Customs,* and *The United States of America*, C.D. 4792---------- 77
For summary judgment
(*see* DISPOSABLE PLASTIC APRONS AND BIBS, C.D. 4796).
(*see* SEATS FOR RAPID TRANSIT CARS, C.D. 4808).
TO AMEND SUMMONS; CROSS-MOTION TO SEVER AND DISMISS
Pursuant to rule 3.2(f) of the Rules of the U.S. Customs Court plaintiff moved for leave to file an amended summons correcting a certain entry number, asserting that the error was typographical in nature and that a correction would not prejudice defendant. Defendant opposed the motion and cross-moved under rules 4.7(b) and 4.12 to sever the action and dismiss it as to that entry. Defendant asserted it would be prejudiced if the relief sought by plaintiff was granted, pointing out the entry number appeared not only on the summons but on the protest and that the proposed amendment would encompass an entry of merchandise which was never covered by the protest. Plaintiff did not respond to the cross-motion.

On the record presented, the court agreed with defendant. Further, the court found there was nothing in the protest itself to indicate the capacity in which plaintiff acted in filing that document administratively. Plaintiff had represented to the court that it acted as importer in filing the summons but the court found that capacity was conclusively refuted by disclosures of different parties in Customs Form 5101.

Holding that plaintiff lacked standing to prosecute the action as authorized under 28 U.S.C.A., sec. 1582(a), *vis-a-vis* 19 U.S.C.A., sec. 1514(b)(1), the court denied plaintiff's motion to amend and granted defendant's cross-motion to sever and dismiss. *Block Handbag, Inc.*, C.D. 4791---------- 75
TO DISMISS ACTION; FAILURE TO COMPLY WITH CONDITION PRECEDENT
Plaintiff brought a certain action to obtain a refund of customs duties which it claimed were improperly assessed on excess moisture and impurities in shipments of crude palm kernel oil imported from Zaire, Sumatra and Malaysia. Pursuant to rule 4.7(b)(3), defendant moved to dismiss the action for plaintiff's failure to comply with a condition precedent. Defendant contended that, since plaintiff failed to file Customs Form 4315, "Application for Allowance in Duties", it

MOTION—Continued Page

TO DISMISS ACTION—Continued

had not complied with a condition precedent mandated by a valid regulation (19 C.F.R. § 158.13). Plaintiff attributed its failure to have filed to the untimely death of its attorney and moved to have the court order the customs officials to accept the filing *nunc pro tunc* of Customs Form 4315.

Under applicable case law, the court held that plaintiff, by not having complied with a mandatory condition precedent i.e. the filing of Customs Form 4315, was not entitled to the recovery of the statutory allowance. Accordingly, defendant's motion to dismiss was granted and plaintiff's cross-motion was denied. *PVO International, Inc.*, C.D. 4795 ---------- 157

TO DISMISS FOR LACK OF JURISDICTION; SUMMONS UNTIMELY FILED

Defendant moved to dismiss a certain action on the ground that the Customs Court lacked jurisdiction of the subject matter, inasmuch as the action was not filed within 180 days of the denial of the protests as required under 28 U.S.C.A. § 2631. Plaintiff responded by asserting that the summons was mailed on the 180th day following denial of the protests in accordance with rule 3.2(b) of the Rules of the United States Customs Court.

The record disclosed that plaintiff mailed the summons to the office of the defendant's attorney on October 30, 1978, or 180 days after denial of the protests, that the summons was received by counsel on November 2, 1978, and forwarded by counsel to the clerk of this court on November 3, 1978, the date of the filing of the summons, and that counsel so advised plaintiff by letter on the same date. Finding that the summons was not addressed to the clerk of the court as provided for in the rule, the court held the summons was not filed in accordance with rule 3.2(b) so as to be deemed filed as of the date of the postmark. Since the action was commenced by a summons untimely filed 184 days after the denial of the protests, defendant's motion to dismiss was granted. *Else Schmelzer dba Staufen Studio*, C.D. 4785 ---------- 32

MOVEMENT

COMMON MEANING (*see* MONOLITHIC INTEGRATED CIRCUITS, C.D. 4810).

MULTIPLE PROTESTS

MOTION FOR JUDGMENT ON PLEADINGS

Pursuant to rule 4.9, Rules of the United States Customs Court, plaintiff moved for judgment on the pleadings. Defendant cross-moved to dismiss the action for lack of jurisdiction.

Plaintiff had filed a protest which contested the imposition of a 10% surcharge upon a certain entry pursuant to Presidential Proclamation No. 4074, item 948.00, Tariff Schedules of the United States. The protest was denied but plaintiff did not commence a civil action in the Customs Court to contest the denial of the protest. A second protest was filed on the same day and at the same time to contest customs' denial of a reduction in the dutiable value of the merchandise contained in the entry, pursuant to TSUS item 807.00. That protest, which made no mention of the initial protest or of the surcharge claim, was denied. Thereafter, plaintiff filed the instant action to contest the denial of the second protest. Plaintiff took the position that repeated and/or multiple filing of protests may be made with respect to an individual entry because of the permissive connotation of the word "may" in the language "may be filed" in 19 U.S.C. § 1514.

Rejecting plaintiff's theory, the court held that only one protest can be validly filed with respect to a single entry of merchandise; that only the first protest filed herein was valid under section 1514(b)(1); and, that under the requisite conditions imposed in 28 U.S.C. § 1582(c), the court lacked jurisdiction over the instant action. Accordingly, plaintiff's motion for judgment on the pleadings was denied and defendant's cross-motion to dismiss the action was granted. *American Bosch, Div. of Ambac Ind., Inc.*, C.D. 4789 ---------- 67

NEGATIVE FINDING
SECRETARY OF TREASURY (*see* COUNTERVAILING DUTIES, C.D. 4782).
NONENUMERATED PRODUCTS, OTHER (*see* DIAGNOSTIC TEST KIT, C.D. 4798).
NOTICE OF LIQUIDATION
COMPLIANCE WITH STATUTORY PROVISIONS AND CUSTOMS REGULATIONS (*see* MOTION FOR REHEARING, C.D. 4793).
NUNC PRO TUNC FILING DISALLOWED (*see* MOTION TO DISMISS ACTION, C.D. 4795).
OPTICAL
APPLIANCES AND INSTRUMENTS NOT PROVIDED FOR ELSEWHERE * * * [O]THER * * * (*see* MACHINES FOR OPTICAL INSPECTION OF AMPULS, C.D. 4807).
ELEMENT NEED NOT BE DOMINANT; OPTICAL INSTRUMENTS (*see* MACHINES FOR OPTICAL INSPECTION OF AMPULS, C.D. 4807).
GLASS
(*see* COLOR FILTER GLASS, C.D. 4783).
Common meaning (*see* COLOR FILTER GLASS, C.D. 4783).
Legislative history (*see* COLOR FILTER GLASS, C.D. 4783).
INSTRUMENTS
Optical element need not be dominant (*see* MACHINES FOR OPTICAL INSPECTION OF AMPULS, C.D. 4807).
Spectrometers (*see* COLOR FILTER GLASS, C.D. 4783).
MEASURING OR CHECKING INSTRUMENTS * * * (*see* MACHINES FOR OPTICAL INSPECTION OF AMPULS, C.D. 4807).
ORDINARILY OR NOT ORDINARILY SOLD AT RETAIL WITH THE CASES
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Certain bronze carvings, called pinnacles, assembled after importation from Italy to form a crown which was affixed at the top of a tower in the Madonna Queen National Shrine, below which stood a statue of Mary, the Mother of Christ, known as Madonna, Queen of the Universe, were classified under item 657.35, Tariff Schedules of the United

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States, as modified by T.D. 68–9, as "[a]rticles of copper, not coated or plated with precious metal: . . . Other." Plaintiff claimed that the importation was properly classifiable under the duty free TSUS item 850.70, which covers shrines and parts, appurtenances or adjuncts of shrines.
From an examination of the previous location of the statue, as well as its present site, the testimony and exhibits of record, the court held the statue known as Madonna Queen of the Universe, at the Madonna Queen National Shrine in East Boston, was a shrine within the meaning of the tariff laws; and as appurtenances or adjuncts of a shrine, the imported pinnacles were entitled to duty-free entry under TSUS item 850.70. *Pistorino & Company, Inc.*, C.D. 4799---------- 168
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Finding that plaintiff introduced no evidence directed toward proof of its claim; failed to prove that method of sampling or testing was incorrect; or, that any other errors detracted from the presumptive correctness of the classification, the court entered judgment for defendant. *Lawrence Braverman*, C.D. 4797---------- 165
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SEATS FOR RAPID TRANSIT CARS
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This action arises on cross-motions by the parties for summary judgment filed pursuant to Rule 8.2, Rules of the United States Customs Court. Certain transverse rapid transit seats, used exclusively in San Francisco Bay Area Rapid Transit (BART) rail vehicles, were classified under item 727.55, Tariff Schedules of the United States, as furniture, and parts thereof, not specially provided for: * * * Other. Plaintiff claimed the merchandise was properly classifiable as parts of rail vehicles or cars under TSUS item 690.40.
On the record presented, the court found the seats were "fixed to the wall", thus satisfying the statutory definition of furniture. Since the nature, function and purpose of the seats showed that they were parts of the rail vehicles or cars, the court held the merchandise, being described in two provisions of the schedule, was classifiable in the provision which most specifically describes it. (General Interpretative Rule 10(c)). Thus, these BART seats were held classifiable as parts of rail vehicles or cars under TSUS item 690.40. Accordingly, plaintiff's motion for summary judgment was granted and defendant's cross-motion for summary judgment was denied. *David E. Porter*, C.D. 4808 ---------- 259
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Certain shore-frame systems and parts thereof comprising "scaffold-type shoring", used as a temporary support for concrete formwork and for other structural purposes were classified under item 657.20, Tariff Schedules of the United States, the "basket" provision for articles of iron or steel in TSUS item 657.20, as modified. Plaintiff claimed the imports were classifiable as "other structures and parts of structures" within the purview of the superior heading to TSUS items 652.90–652.98, and were properly dutiable under item 652.98.
On the record presented, legislative history and lexicographic sources, the court sustained plaintiff's claim. It held that the merchandise was classifiable under the provision for "structures * * * and parts of structures" in heading 73.21 of the Brussels Nomenclature, and accordingly fell within the intended scope of the identical language in the superior heading to TSUS item 652.98. Inasmuch as the protest covering one entry was untimely, the action was dismissed *sua sponte* for lack of jurisdiction as to that entry. Subject to that exception, judgment was entered for plaintiff. *S.G.B. Steel Scaffolding & Shoring Co., Inc.* v. *United States*, C.D. 4802 ---------- 197
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L. COPELAND & R. LIDDICOAT, JR., THE JEWELERS' MANUAL (1967), P. 181 (*see* MONOLITHIC INTEGRATED CIRCUITS, C.D. 4810).
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U.S. INDUSTRIAL OUTLOOK (1978), P. 23 (*see* COUNTERVAILING DUTIES, C.D. 4782).

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SIMPLE PISTON PUMP SPRAYS

Certain trigger sprayers were classified under item 622.35, Tariff Schedules of the United States, as modified by T.D. 68–9, which provides for simple piston pump sprays. Plaintiffs claimed the sprayers were not simple and were, therefore, properly subject to classification under TSUS item 662.50, as modified.

On the record presented, the court held testimony of witnesses as to whether sprayers were simple or complex to be merely advisory and not binding upon the court; that based upon an examination of the merchandise and testimony with respect to its operation, the involved merchandise fell within the classified language; and, that plaintiffs had failed to establish that the sprayers were within the statutory language of TSUS item 662.50, as modified. Accordingly, the action was dismissed. *Continental Manufacturing Co. et al.*, C.D. 4800 187

"T.V. GAMES"

GAME MACHINES

Certain merchandise invoiced as "T.V. Games" was classified as game equipment not specially provided for under item 735.20, Tariff Schedules of the United States. Plaintiff's principal claim was that the merchandise was properly classifiable under TSUS item 734.20 as game machines.

Finding that the imported merchandise had the capability, when connected to a television set, to be used for playing games; and, that the merchandise came within the common meaning of the term "machine", the court held that under the rule of relative specificity the imported merchandise was properly classifiable under TSUS item 734.20 as game machines. Accordingly, plaintiff's claim was sustained. *APF Electronics, Inc.*, C.D. 4784 25

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Certain merchandise invoiced as "DIS 611", with or without descriptive information, was classified as a "dial" under item 720.40, Tariff Schedules of the United States. Plaintiff claimed that the merchandise was properly classifiable under TSUS item 685.70 as electrical indicator panels or electrical signalling apparatus.

Finding that the imported merchandise is a part of a solid state digital watch which does not possess a "movement" and therefore cannot be a dial of a watch, the court held that it was properly classifiable under TSUS item 685.70 as an indicator panel or a visual signalling apparatus. Accordingly, plaintiff's claim was sustained. *Texas Instruments Inc.*, C.D. 4811 287

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Export value—The imported merchandise was found to be on the final list issued by the Secretary of the Treasury, T.D. 54521, under the provision for "Instruments and parts, laboratory, sound measuring" and therefore cannot be appraised on the basis of export value, as defined in Sec. 402(b), T.A. of 1930, as amended. *B & K Instruments, Inc.*, C.D. 4803 — 219

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EQUITABLE RELIEF, REQUEST FOR, DENIED (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).

AMERICAN

MANUFACTURER'S ACTION

(*see* DOCUMENTS, C.R.D. 79–11).

Motion for order cancelling liquidations denied

A motion was brought on by order to show cause, in which plaintiff, an American manufacturer, urged the Customs Court, among other things, to order pursuant to 28 U.S.C.A., sec. 1651 [All Writs Act] the cancellation of liquidations on which appraisements had been made or the withholding of appraisement and liquidation of other entries of Portland hydraulic cement from Canada pending the final disposition of an American manufacturer's action affecting a single entry. That action contested a decision of the Secretary of the Treasury made pursuant to 19 U.S.C.A., sec. 1516(c), denying plaintiff's petition urging the imposition of dumping duties on Portland hydraulic cement of Canadian origin following a no-injury determination of the United States International Trade Commission.

Plaintiff asserted that the court was authorized under the All Writs Act to grant the equitable relief prayed for in the nature of mandamus and injunction. Memoranda of law were filed by plaintiff, defendant, the party-in-interest and *amici curiae* articulating their respective contentions. The court also considered a transcript of the rather extensive oral arguments heard by the court on the return of the order to show cause.

Finding the relief sought to be entirely equitable in nature, the court held that the Customs Court, a court of limited statutory jurisdiction, lacked equitable powers and such jurisdictional void was not removed through the All Writs Act. Accordingly, plaintiff's motion for an order in the form of mandamus and injunction, and for certain ancillary relief, was denied. *Flintkote Company, Glens Falls Division* v. *United States* (*Independent Cement Co.*, Party in Interest), C.R.D. 79–5 305

Secretary of the Treasury's failure to assess dumping duties (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).

MANUFACTURERS' ACTION (*see* DOCUMENTS, C.R.D.'s 79–2, 79–8).

ANTIDUMPING
(*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79-5).
(*see* DOCUMENTS, C.R.D.'s 79-2, 79-8, 79-11).
(*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
BOUNTY OR GRANT
ADDITIONAL DUTY, ASSESSMENT OF (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
CUSTOMS COURT, SCOPE OF TRIAL (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
BRIEF
FACTUAL MATTERS NOT BEFORE THE COURT (*see* MOTION TO STRIKE PORTIONS OF BRIEF, C.R.D. 79-7).
(*see* MOTION TO STRIKE PORTIONS OF BRIEF, C.R.D. 79-7).
CEMENT, HYDRAULIC (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79-5).
CIVIL ACTION
ADMINISTRATIVE REFUSAL TO GRANT RELIEF CONTESTED (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
CONSTRUCTION
ADMINISTRATIVE PROCEDURE ACT (5 U.S.C. §§ 551, *et seq.*) (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
ALL WRITS ACT, 28 U.S.C.A. 1651(a) (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79-5).
ANTIDUMPING ACT OF 1921
(*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
(19 U.S.C. §§ 160 *et seq.*) (*see* DOCUMENTS, C.R.D. 79-11).
ANTIDUMPING ACT OF 1921, AS AMENDED (*see* DOCUMENTS, C.R.D.'s 79-2, 79-8).
ANTIDUMPING ACT OF 1930 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
CIVIL RIGHTS ACT OF 1964, *sec.* 717(c) (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
CODE OF FEDERAL REGULATIONS, TITLE 19, SEC. 171.33 (*see* DISMISSAL OF COURT NO. 77-7-01146 [81 CUST CT. 86, C.D. 4771], C.R.D. 79-10).
CUSTOMS ADMINISTRATIVE ACT OF JUNE 10, 1890, SEC. 14 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
CUSTOMS COURTS ACT OF 1970, P.L. 91-271
(*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79-5).
(*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972 (42 U.S.C. §§ 2200(c)-16(c)) (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6)
FEDERAL RULES OF CIVIL PROCEDURE, RULE 56(d) (*see* WRITTEN OPINION, REQUEST FOR DENIED, C.R.D. 79-3).
FREEDOM OF INFORMATION ACT (*see* DOCUMENTS, C.R.D. 79-11).
PUBLIC LAW
91-271, title I, sec. 113, 84 Stat. 279 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
93-618, title III, ch. 2, secs.
321(f)(3), 88 Stat. 2048 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
331(a), 88 Stat. 2049 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
RULES OF U.S. CUSTOMS COURT, RULES
1.1 (*see* MOTION TO STRIKE PORTIONS OF BRIEF, C.R.D. 79-7).
6.1(c) (*see* DOCUMENTS, C.R.D. 79-2).
6.4 (*see* DOCUMENTS, C.R.D. 79-2).
6.4(b) (*see* DOCUMENTS, C.R.D. 79-2).
6.5 (*see* DOCUMENTS, C.R.D.'s 79-2, 79-8).
7.3 (*see* DOCUMENTS, C.R.D. 79-2).
8.2(e) (*see* WRITTEN OPINION, REQUEST FOR DENIED, C.R.D. 79-3).

CONSTRUCTION—Continued
RULES OF U.S. CUSTOMS COURT, RULES—Continued
11.3(g) (*see* MOTION TO STRIKE PORTIONS OF BRIEF, C.R.D. 79–7).
14.7(a) (see MOTION TO SUSPEND UNDER TEST CASE, C.R.D. 79–1).
TARIFF ACT OF 1897, CH. 11, SEC. 5 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
TARIFF ACT OF 1922, TITLE III, SEC. 315 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
TARIFF ACT OF 1930, SECS.
303 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
336 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
515 (prior to 1970) (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
TARIFF SCHEDULES OF THE UNITED STATES, ITEMS
352.80 (*see* MOTION TO SUSPEND UNDER TEST CASE, C.R.D. 79–1).
355.35 (*see* MOTION TO SUSPEND UNDER TEST CASE, C.R.D. 79–1).
359.10 (*see* MOTION TO SUSPEND UNDER TEST CASE, C.R.D. 79–1).
386.04 (*see* MOTION TO SUSPEND UNDER TEST CASE, C.R.D. 79–1).
650.21 (*see* MOTION TO STRIKE PORTIONS OF BRIEF, C.R.D. 79–7).
TRADE ACT OF 1974 (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79–9).
U.S. CODE
Title 5, secs.
522(b)(5) (*see* DOCUMENTS, C.R.D. 79–11).
551 *et seq.* (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
706 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
Title 10, sec. 1466 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
Title 15, sec. 21(a) (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
Title 19, secs.
160 *et seq.*
(*see* DOCUMENTS, C.R.D.'s 79–2, 79–8, 79–11).
(*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
1303 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
1336 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
1514 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
1514(a) (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
1514(a)(3) (*see* DISMISSAL OF COURT NO. 77–7–01146 [81 CUST. CT. 86, C.D. 4771], C.R.D. 79–10).
1516(a), 1964 ed. (*see* AMERICAN MANUFACTURER'S ACTION C.R.D. 79–5).
1516(c) (*see* DOCUMENTS, C.R.D.'s 79–2, 79–8, 79–11).
1541(b) (*see* DOCUMENTS, C.R.D.'s 79–2, 79–11).
1592 (*see* DISMISSAL OF COURT NO. 77–7–01146 [81 CUST. CT. 86, C.D. 4771], C.R.D. 79–10).
Title 26, secs.
6213 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
7422 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).

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U.S. CODE—Continued
Title 28, secs.
253 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
255 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
256 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
1340 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
1346 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
1541(b) (*see* DOCUMENT, C.R.D. 79-4).
1582 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
1582(b) (*see* DOCUMENTS, C.R.D.'s 79-2, 79-8).
1582(c) (*see* DISMISSAL OF COURT NO. 77-7-01146 [81 CUST. CT. 86, C.D. 4771], C.R.D. 79-10).
1583 (repealed) (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
2631(a) (*see* DISMISSAL OF COURT NO. 77-7-01146 [81 CUST. CT. 86, C.D. 4771], C.R.D. 79-10).
2632 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
2632(a)
(*see* DOCUMENTS, C.R.D.'s 79-2, 79-8).
(*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
2632(a)(3) (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
2637 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
2638(a) (*see* WRITTEN OPINION, REQUEST FOR DENIED, C.R.D. 79-3).
2638(b) (*see* WRITTEN OPINION, REQUEST FOR DENIED, C.R.D. 79-3).
Title 42, secs. 2200(c)-16(c) (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
U.S. CODE ANNOTATED
Title 19, secs.
1303 (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79-9).
1516 (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79-5).
1516(a), 1964 ed. (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79-5).
1516(c) (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79-5).
1516(d) (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79-9).
1516(e) (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79-5).
1515(g) (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79-5).
Title 28, secs.
1651 (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79.5).
1651(a) (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79-5).
WUNDERLICH ACT, 68 STAT. 81 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
COUNTERVAILING
DUTIES
History of litigation (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
Tires (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).

COUNTERVAILING—Continued
DUTY
Action (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
Actions; scope of trial (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79–9).
Administrative assessment of (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
Secretary of the Treasury, no discretion in ordering assessment of additional duties (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
CROSS-MOTION
FOR PROTECTIVE ORDER (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79–9).
TO REOPEN TRIAL (*see* MOTION TO STRIKE PORTIONS OF BRIEF, C.R.D. 79–7).
TO SET ASIDE SUBMISSION OF CASE (*see* MOTION TO STRIKE PORTIONS OF BRIEF, C.R.D. 79–7).
CUSTOMS COURT
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(*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).
(*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
LIMITED STATUTORY JURISDICTION; JURISDICTION, NO EQUITABLE (*see* American Manufacturer's Action, C.R.D. 79–5).)
POWER TO DECIDE ISSUES OF FACT AND LAW (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
POWERS OF (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
SCOPE OF
Authority (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
Judicial review (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
Trial
Bounty or grant (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
(*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79–9).
(*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
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"CONTEST THE DENIAL OF A PROTEST" (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
DEPOSITION, MOTION FOR (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79–9).
DISCOVERY
(*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79–9).
MOTION TO COMPEL (*see* DOCUMENTS, C.R.D.'s 79–2, 79–8).
DISMISSAL OF COURT NO. 77–7–01146 [81 CUST. CT. 86, C.D. 4771]
LACK OF JURISDICTION
This is a memorandum opinion by the Customs Court in explanation of its dismissal of Court No. 77–7–01146 for lack of jurisdiction in *Mitsubishi International Corporation* v. *United States*, 81 Cust. Ct. 86, C.D. 4771 (1978). That action originated in a protest made against a notification by the district director at Anchorage, Alaska that he was mitigating a previous demand for penalties to a lower amount. Defendant moved to dismiss the action on the ground that decisions relating to the imposition of a penalty were not within the subject matter jurisdiction of the Customs Court. Initially, the court denied the motion, holding that a decision to impose a penalty was a decision as to

DISMISSAL OF COURT NO. 77-7-01146—Continued Page

LACK OF JURISDICTION—Continued

an exaction within the meaning of 19 U.S.C., sec. 1514(a)(3), was protestable, and ultimately could be challenged in this court. *Mitsubishi International Corporation* v. *United States*, 81 Cust. Ct. 86, C.R.D. 78-9, 454 F. Supp 458 (1978). Thereafter, upon defendant's motion for rehearing and reconsideration, the court dismissed the action without opinion.

In its memorandum opinion in explanation of dismissal the court states the protest had been made following a decision to lower the penalty; that the district director refused to treat the protest as a protest and characterized it as a "supplemental petition" for review pursuant to 19 C.F.R., sec. 171.33; that plaintiff's objections did subsequently receive administrative review; and, although the district director could not transform the importer's protest into a petition by administrative fiat, he did not deny the protest by electing to consider its contents under another name; the protest was ultimately denied when the "supplemental petition" was denied; and, since plaintiff brought its action prior to the actual denial of the administrative protest, the action was prematurely commenced in the Customs Court. For the foregoing reasons, the action was dismissed. *Mitsubishi International Corporation*, C.R.D. 79-10 350

DISPOSITIVE MOTION (*see* WRITTEN OPINION, REQUEST FOR, DENIED, C.R.D. 79-3).

DOCUMENT

MOTION FOR PROTECTIVE ORDER

Pursuant to an order of the United States Customs Court, the Secretary of the United States International Trade Commission transmitted two certified copies of a designated document to the court.

The court, having made an *in camera* inspection of the document, and following the principles articulated in *Sprague Electric Company* v. *United States* (*Capar Components Corp.*, Party in Interest), 81 Cust. Ct. 168, C.R.D. 78-18 (1978), determined that the excised portion of the document was not privileged. Accordingly, defendant's motion for a protective order was denied with respect to the deleted portion. The court ordered defendant to make available to plaintiff a certified copy of the document, without deletion, within 10 days of the entry of the order. Defendant's alternative request to proceed by way of immediate appeal was denied. *Sprague Electric Company* v. *United States* (*Capar Components Corp.*, Party in Interest), C.R.D. 79-4 304

DOCUMENTS

MOTION FOR PRODUCTION OF (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79-9).

MOTION FOR PROTECTIVE ORDER

In an American manufacturer's action, the Customs Court entered an order requiring the International Trade Commission (ITC) to prepare and transmit to the Clerk of the Customs Court a certified copy of the transcript of proceedings and all exhibits introduced before the Commission in a certain investigation; as well as certified copies of all written submissions, questionnaires, reports and other documents relating thereto; and all other things in the files of the Commission relating to that investigation. *SCM Corporation* v. *United States* (*Brother International Corporation, Party in Interest*), 81 Cust. Ct. 159, C.R.D. 78-13 (1978). In compliance therewith, copies of all documents, confidential and nonconfidential, were transmitted to the court. Based upon a claim of executive privilege asserted by the Chairman of the ITC, defendant moved for a protective order as to nine documents. As alternative relief, defendant requested an immediate appeal to the Court of Customs and Patent Appeals.

Plaintiff opposed defendant's motion, contending that the claim of executive privilege had been waived by defendant's conduct, and that it had not been properly invoked. Plaintiff further maintained that privilege against interagency advisory opinions was not absolute but qualified, and that the Chairman of the International Trade Commission was not the appropriate officer to invoke the privilege for that agency.

DOCUMENTS—Continued Page

MOTION FOR PROTECTIVE ORDER—Continued

The court found *inter alia* that a waiver could not be implied on the facts before the court; that there had been full compliance with established criteria; and, that plaintiff had not demonstrated a clear and persuasive need for the documents in question. Accordingly, the court granted defendant's motion. The Clerk of the Court was ordered to seal the documents specified and to keep them sealed pending any further order by the court. Defendant's request to file an immediate appeal was held to be moot. *SCM Corporation* v. *United States* (*Brother International Corporation, Party in Interest*), C.R.D. 79–11 ---------- 351

MOTION TO COMPEL DISCOVERY

Plaintiffs initially by means of a request for production of documents under Rule 6.4, and then by a motion to compel discovery under Rule 6.5, sought access to six documents in the files of the Treasury Department. Defendant claimed that portions of these six documents were nondiscoverable on the ground of executive privilege. In support of its claim, defendant submitted an affidavit executed by the Secretary of the Treasury. Plaintiffs contended that any possible executive privilege pertaining to the six documents was waived inasmuch as defendant had not filed a motion for a protective order.

After considering plaintiffs' position and defendant's response, the court found that defendant had followed a correct procedure in asserting the Secretary's claim of privilege as an objection to plaintiffs' request for production of documents pursuant to Rule 4.6(b); and, that plaintiffs' contention that defendant had waived privilege was without merit. On the facts presented, the court ordered the Secretary of the Treasury within thirty days of the entry of its order to prepare and transmit under seal to the Clerk of the United States Customs Court certified copies, in complete and unexpurgated form, of the six documents identified in the Secretary's affidavit; the unexpurgated copies to be inspected by the court *in camera* together with the expurgated copies submitted for the purpose of considering defendant's claim of executive privilege and determining whether the expurgated portions should be disclosed to plaintiffs; and denied defendant's request to file an immediate appeal pursuant to 28 U.S.C. § 1541(b). *Armstrong Bros. Tool Co. et al.* v. *United States* (*Great Neck Saw Manufacturing, Inc.*, Party in Interest), C.R.D. 79–2 ------ 296

MOTION TO COMPEL DISCOVERY DENIED

Plaintiffs filed a motion to compel discovery under Rule 6.5 seeking access to six documents in the files of the Treasury Department. Defendant interposed a claim of executive privilege respecting certain expurgated portions of the six documents supported by an affidavit executed by the Secretary of the Treasury (Secretary). The Secretary's affidavit asserted privilege respecting each of the six documents to the extent they contained advice, recommendations, or statements of views and opinions by officials and staff members of the Treasury Department. Secretary's affidavit did not specifically aver that the deleted portions comprised such "advice, recommendations, or statements of views and opinions * * *".

The court had previously entered an order in this case directing the Secretary to prepare and transmit under seal to the court certified copies of the six documents in complete and unexpurgated form for an *in camera* inspection (*Armstrong Bros. Tool Co. et al.* v. *United States, etc.*, 82 Cust. Ct. 290, C.R.D. 79–2 (1979)). The Secretary had complied with that order and the court had made an *in camera* inspection of the disputed documents.

Following the principles enunciated in prior opinions, the court found the deleted portions of each of the six documents comprised "advice, recommendations, or statements of views or opinions, of various officials and staff members of [the Treasury] Department", as stated in the Secretary's affidavit, and sustained defendant's claim of privilege. Accordingly, plaintiffs' motion was denied. *Armstrong Bros. Tool Co. et al.* v. *United States* (*Great Neck Saw Manufacturing, Inc.*, Party in Interest), C.R.D. 79–8---------- 344

DUMPING DUTIES, FAILURE TO ASSESS
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DUTY, COUNTERVAILING (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79–9).
EQUITABLE RELIEF
CUSTOMS COURT CANNOT GRANT; MANDATORY INJUNCTION (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).
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(*see* DOCUMENTS, C.R.D. 79–11).
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EXPLANATION MEMORANDUM OF DISMISSAL OF COURT NO. 77–7–01146 [81 CUST. CT. 86, C.D. 4771] (*see* DISMISSAL OF COURT NO. 77–7–01146, [81 CUST. CT. 86, C.D. 4771], C.R.D. 79–10).
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IMMEDIATE APPEAL
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REQUEST TO FILE (*see* DOCUMENT, C.R.D. 79–4).
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(*see* DOCUMENT, C.R.D. 79–4).
(*see* DOCUMENTS, C.R.D.'s 79–2, 79–11).
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(*see* DOCUMENT, C.R.D. 79–4).
(*see* DOCUMENTS, C.R.D. 79–11).
NEGATIVE INJURY DETERMINATION (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).
INTRAGOVERNMENTAL
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NEGATIVE INJURY DETERMINATION BY INTERNATIONAL TRADE COMMISSION (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).
SECRETARY OF THE TREASURY, NEGATIVE COUNTERVAILING DUTY DETERMINATION (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79–9).

JURISDICTION
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(*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).
(*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
LACK OF (*see* DISMISSAL OF COURT NO. 77–7–01146 [81 CUST. CT. 86, C.D. 4771], C.R.D. 79–10).
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LACK OF JURISDICTION
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(*see* DISMISSAL OF COURT NO. 77–7–01146 [81 CUST. CT. 86, C.D. 4771], C.R.D. 79–10).

LEGISLATIVE HISTORY
H.R. REPORT
No. 2348, 84th Cong., 2d Sess. (1956), p. 2 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
No. 91–267, 91st Cong., 2d Sess. (1970) (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).
No. 91–1067, 91st Cong., 2d Sess. (1970)
(*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
(*see* WRITTEN OPINION, REQUEST FOR, DENIED, C.R.D. 79–3).
REPORT OF THE COMMITTEE ON WAYS AND MEANS TO ACCOMPANY H.R. 7456, 67TH CONG., 1ST SESS., H.R. REPORT No. 248, P. 26 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
SENATE FINANCE COMMITTEE REPORT (SENATE REPORT No. 92–1221, 92ND CONG., 2D SESS. (1972), P. 8) (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
SENATE REPORT
No. 91–576, 91st Cong., 1st Sess. (1969), p. 13 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
No. 91–1067, 91st Cong., 2d Sess. (1970), p. 3 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
U.S. CODE CONG. & AD. NEWS (1956), VOL. 2, PP. 3122, 3123 (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).
U.S. CODE CONG. & AD. NEWS (1970), VOL. 2, P. 3217 (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).

LIQUIDATION, SUSPENSION OF (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).

MANDAMUS, REQUEST FOR, DENIED (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).

MANDATORY INJUNCTION
EQUITABLE RELIEF, CUSTOMS COURT CANNOT GRANT (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).

MOTION
FOR DEPOSITION AND PRODUCTION OF DOCUMENTS; CROSS-MOTION FOR PROTECTIVE ORDER
In a certain action to review a negative countervailing duty determination of the Secretary of the Treasury, authorized under 19 U.S.C.A., sec. 1516(d), plaintiff moved to depose defendant through its agents—an attorney-adviser in the Office of the General Counsel, United States Department of the Treasury; an Assistant Chief Counsel, United States Customs Service (formerly an attorney-adviser in the Office of the General Counsel, United States Department of the Treasury); and a former Deputy Assistant Secretary of the Treasury—and to require the deponents to bring with them all documents and tangible things in their possession or under their control, not previously furnished by defendant to plaintiff's counsel in this action, relating to the countervailing duty case of *Ferrochrome from South Africa*. Defendant opposed the motion and cross-moved for a protective order limiting the scope of the depositions, asserting that the scope of judicial review in this action

MOTION—Continued Page

FOR DEPOSITION AND PRODUCTION OF DOCUMENTS—Continued

was limited to the administrative record; that the depositions sought constituted improper attempts to probe the mental processes of the administrative decision-maker and his attorney-advisers; and that two of the attorneys sought to be deposed were employees of the United States whom plaintiff improperly sought to examine as agents. Plaintiff's response maintained *inter alia* that the scope of judicial review of the Secretary's negative countervailing duty order was trial *de novo*.

After considering the arguments of the parties, the court held that proposed discovery did not exceed limits or warrant protective measures at this point; that defendant's fears were at best anticipatory and premature, and not grounded in any factual basis; and, that in the event any improper questions were propounded during the examination, defendant's remedies would be ample and accessible at such time. Accordingly plaintiff's motion was granted and defendant's cross-motion denied. *Airco, Inc.*, C.R.D. 79–9 345

FOR ORDER CANCELLING LIQUIDATION DENIED (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).

FOR PROTECTIVE ORDER

(*see* DOCUMENT, C.R.D. 79–4).

(*see* DOCUMENTS, C.R.D.'s 79–2, 79–11).

FOR SUMMARY JUDGMENT (*see* WRITTEN OPINION REQUEST FOR, DENIED, C.R.D. 79–3).

FOR SUMMARY JUDGMENT DENIED; COUNTERVAILING DUTY ACTION

Plaintiff commenced an action pursuant to 28 U.S.C., sec. 2632, to contest the denial of its administrative protest against the assessment of countervailing duties on tires imported from Canada. Levy of that additional duty had been made pursuant to sec. 303 of the Tariff Act of 1930, which requires the assessment of additional duty when a bounty or grant is bestowed on the manufacture, production or export of an imported article. Defendant moved for summary judgment and in its motion argued that the Customs Court is restricted to reviewing the facts contained in the record of the Secretary of the Treasury's administrative investigation into the question of the existence of a bounty or grant. Defendant further argued that this court is limited to judging whether the resulting decision of the Secretary was unreasonable, arbitrary or capricious. The government also sought a summary judgment without regard to the asserted restrictions on the court's power to try the issues in the case.

After relying on and discussing relevant statutes, case law, recent and remote history of the action for recovery of duty as well as the action's constitutional implications, the court held that all relevant issues of fact and law are subject to trial in a civil action contesting the denial of an administrative protest against the assessment of countervailing duty, including the issue of the existence of a bounty or grant. It was also held that the Customs Court is the exclusive judicial forum for the determination of the existence of a bounty or grant and that the court is not restricted to reviewing the record of an administrative investigation into the existence of a bounty or grant. The court is not confined to deciding whether the result of the administrative investigation was unreasonable, arbitrary or capricious.

Inasmuch as defendant's presentation of the issues in this case was unclear and incomplete, because of intensive emphasis on the asserted restrictions on the court's power to try all the issues, the court denied the motion for summary judgment. In its memorandum opinion, the court distinguished and criticized restrictions expressed in flexible tariff and antidumping cases. The application of principles of limited judicial review of administrative action to proceedings in this court was rejected in a discussion of *Suwannee Steamship* v. *United States*, 70 Cust. Ct. 327, C.R.D. 73–3 (1973). *Michelin Tire Corporation*, C.R.D. 79–6 308

Appealed to U.S. Court of Customs and Patent Appeals, Appeal 79–17

MOTION—Continued Page

TO COMPEL DISCOVERY

Denied (*see* DOCUMENTS, C.R.D. 79–8).

(*see* DOCUMENTS, C.R.D. 79–2).

TO STRIKE PORTIONS OF BRIEF; CROSS-MOTION TO REOPEN TRIAL

In this case plaintiff claimed that certain imported knives should be classified under certain items of the Tariff Schedules of the United States, instead of under TSUS item 650.21, as classified by Customs. Plaintiff had filed brief to which defendant, pursuant to rules 1.1 and 11.3(g) of the Rules of the U.S. Customs Court, moved to strike out portions thereof which allegedly made reference to factual matters not before the court. Plaintiff filed a response to defendant's motion opposing the same, and in the alternative moved to set aside the submission and reopen the trial. Defendant had objected to plaintiff's previous motion to vacate submission of this case and to reopen the trial.

The court denied defendant's motion to strike, noting that such motions are only sparingly granted by the court. Plaintiff's cross-motion to reopen the trial was denied and defendant was ordered to file its answer brief on the merits of the case within thirty days from entry of the court's order. *Edge Import Corp.*, C.R.D. 79–7---------- 343

TO SUSPEND UNDER TEST CASE

Certain merchandise was classified under item 386.04, Tariff Schedules of the United States, the provision for "Articles not specially provided for, of textile materials; Lace or net articles, whether or not ornamented, and other articles ornamented: Of cotton." Plaintiff claimed as the correct classification alternatively TSUS item 352.80, "Netting, in the piece, made on a lace, net, or knitting machine, whether or not ornamented: * * * Not ornamented: * * * Other" or TSUS item 359.10, "Textile fabrics, including laminated fabrics, not specially provided for: Of cotton," as the correct classification. Plaintiff filed a motion for suspension under a test case, and in support thereof stated there was a common issue of fact and law, i.e. whether the merchandise was classifiable under TSUS item 355.35. That item provides for "Fish netting and fishing nets (including sections thereof), of textile materials: Of cotton."

The court found that the merchandise in the test case, fish netting, had been classified under item 386.04, and claimed to be dutiable under item 355.35; that item 355.35 did not appear in the proposed suspended case; and, therefore there was no common question of law or fact between the two cases. Accordingly, the motion to suspend was denied. *James A. Cole Co., Inc.*, C.R.D. 79–1---------- 295

NEGATIVE

COUNTERVAILING DUTY DETERMINATION, REVIEW OF (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79–9).

INJURY DETERMINATION BY INTERNATIONAL TRADE COMMISSION; JUDICIAL REVIEW (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).

NO-INJURY DETERMINATION

PORTLAND HYDRAULIC CEMENT (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).

OPINION (*see* WRITTEN OPINION, REQUEST FOR, DENIED, C.R.D. 79–3).

PENALTY, EXACTION OF (*see* DISMISSAL OF COURT NO. 77–7–01146 [81 CUST. CT. 86, C.D. 4771], C.R.D. 79–10).

PORTLAND HYDRAULIC CEMENT

NO-INJURY DETERMINATION (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79–5).

POWER TO DECIDE ISSUES OF FACT AND LAW

CUSTOMS COURT (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).

PRESIDENTIAL DISCRETION IN PROCLAIMING TARIFF MODIFICATION

FLEXIBLE TARIFF (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).

PRODUCTION OF DOCUMENTS, MOTION FOR (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79-9).
PROTECTIVE ORDER
CROSS-MOTION FOR (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79-9).
MOTION FOR
(*see* DOCUMENTS, C.R.D. 79-4).
(*see* DOCUMENTS, C.R.D.'s 79-2, 79-11).
SCOPE OF
AUTHORITY; CUSTOMS COURT (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
JUDICIAL REVIEW; CUSTOMS COURT (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
TRIAL
COUNTERVAILING DUTY ACTIONS (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79-9).
CUSTOMS COURT
(*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79-9).
(*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
SECRETARY OF THE TREASURY
DUMPING DUTIES, FAILURE TO ASSESS (*see* DOCUMENTS, C.R.D. 79-11).
NEGATIVE COUNTERVAILING DUTY DETERMINATION; JUDICIAL REVIEW (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79-9).
NO DISCRETION IN ORDERING ASSESSMENT OF ADDITIONAL DUTIES; COUNTERVAILING DUTY (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
SECRETARY OF THE TREASURY'S FAILURE TO ASSESS DUMPING DUTIES (*see* AMERICAN MANUFACTURER'S ACTION, C.R.D. 79-5).
STATEMENT OF FACTS AND CONCLUSIONS OF LAW, REQUEST FOR, DENIED (*see* WRITTEN OPINION, REQUEST FOR, DENIED, C.R.D. 79-3).
SUBMISSION, CROSS-MOTION TO SET ASIDE (*see* MOTION TO STRIKE PORTIONS OF BRIEF, C.R.D. 79-7).
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SUSPENSIBILITY, CRITERION FOR
ISSUE OF FACT OR QUESTION OF LAW, COMMON (*see* MOTION TO SUSPEND UNDER TEST CASE, C.R.D. 79-1).
TEST CASE, MOTION FOR SUSPENSION UNDER (*see* MOTION TO SUSPEND UNDER TEST CASE, C.R.D. 79-1).
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COUNTERVAILING DUTIES (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
TREASURY DEPARTMENT DOCUMENTS
EXECUTIVE PRIVILEGE, CLAIM SUSTAINED (*see* DOCUMENTS, C.R.D. 79-8).
TREATISES AND RELATED PUBLICATIONS
LOMBARDI, THE UNITED STATES CUSTOMS COURT—A HISTORY OF ITS ORIGIN AND EVOLUTION (1976) (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79-6).
SCHWARTZ, ADMINISTRATIVE LAW (1976), PP. 385-92 (*see* DOCUMENTS, C.R.D. 79-11).
WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL (1970)
Sec. 2019 (*see* DOCUMENTS C.R.D. 79-11).
Sec. 2213 (*see* DOCUMENTS, C.R.D. 79-2).
TRIAL
CROSS-MOTION TO REOPEN (*see* MOTION TO STRIKE PORTIONS OF BRIEF, C.R.D. 79-7).
SCOPE OF; COUNTERVAILING DUTY ACTIONS (*see* MOTION FOR DEPOSITION AND PRODUCTION OF DOCUMENTS, C.R.D. 79-9).

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CONTEST (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).

"CONTEST THE DENIAL OF A PROTEST" (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).

REVIEW (*see* MOTION FOR SUMMARY JUDGMENT DENIED, C.R.D. 79–6).

WRITTEN OPINION, REQUEST FOR, DENIED

DISPOSITIVE MOTION

Plaintiff filed a request that the court issue a written opinion or a statement of findings of fact and conclusions of law concerning the court's denial of its summary judgment motion. In support thereof, plaintiff argued that by reason of 28 U.S.C., sec. 2638(a) where a judge of the United States Customs Court denies the relief requested in a dispositive motion, the judge is required to state the reasons for his decision, either through a written opinion or findings of fact and conclusions of law.

The court, in denying plaintiff's motion, held that section 2638(a) is applicable only to a final decision of a judge of this court; and, that a denial of a motion for summary judgment is not a final decision but an interlocutory order. The court rejected plaintiff's arguments that a court opinion is necessary to apprise it as to what issues require trial; and, that it has been the generally accepted practice of the Customs Court to issue opinions upon denials of motions for summary judgment.

Nadel & Sons Toy Corp., C.R.D. 79–3 302

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